

FILED 10 DEC 8 1348 JAC/DM

Denise & Kenneth Cook  
300 Newt Gulch Road  
Wilderville OR 97543

UNITED STATES DISTRICT COURT  
District Of Oregon

**Denise & Kenneth Cook**  
Plaintiff,

vs.

**HSBC Beneficial**  
Defendant

Case # 1:10CV3121-PA

**PETITION FOR NO ANSWER DE-  
FAULT**

Date: 12/08/2010

**PARTIES**

**PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT**

Plaintiff asks the court clerk to enter a default against defendant, as authorized by Federal Rule of Civil Procedure 55.

**A. Introduction**

1. Plaintiff is: Denise & Kenneth Cook , 300 Newt Gulch Road Wilderville OR 97543, and defendant is: Beneficial Oregon, Inc. ,

2. On 11/04/2010 plaintiff sued defendant for breach of fiduciary duty, fraud, fraud by nondisclosure, and violations of various consumer protection laws.

3. On 11/04/2010 , plaintiff filed with the court an ORIGINAL COMPLAINT. On 11/16/2010 defendant was served with a summons and a copy of plaintiff's complaint by and through Process server. A copy of the return of service is attached as Exhibit A. Defendant did not file a responsive pleading or otherwise defend the suit.

4. Plaintiff is entitled to entry of default.

B. Argument

5. The court clerk may enter a default against a party who has not filed a responsive pleading or otherwise defended the suit. Fed. R. Civ. P. 55(a); see *United States v. \$23,000 in U.S. Currency*, 356 F.3d 157, 163 (1st Cir. 2004); *N.Y. Life Ins. Co. v. Brown*, 84 F.3d 137, 141 (5th Cir. 1996); *United States v. 51 Pieces of Real Prop. Roswell, N.M.*, 17 F.3d 1306, 1314 (10th Cir. 1994).

6. The clerk should enter a default against defendant because defendant did not file an answer within 20 days after 11/16/2010 , the date of service. Fed. R. Civ. P. 12(a)(1)(A)(i).

7. Plaintiff meets the procedural requirements for obtaining an entry of default from the clerk as demonstrated by {*Mark R. Cornwell*}’s sworn affidavit, attached as Exhibit A. Said affidavit establishes by sworn testimony of Plaintiff that Defendant failed to answer or otherwise defend the instant action within the 20 day time period allowed by law.

8. Defendant is not a minor or an incompetent person. See Fed. R. Civ. P. 55(b)(1).

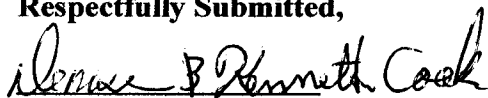
9. Defendant is not in military service. See 50 U.S.C. app. §521(b)(2). An affidavit of defendant’s military status is attached as Exhibit A.

10. Because defendant did not file a responsive pleading or otherwise defend the suit, defendant is not entitled to notice of entry of default. *Haw. Carpenters’ Trust Funds v. Stone*, 794 F.2d 508, 512 (9th Cir. 1986); see Fed. R. Civ. P. 55(a).

C. Conclusion

11. Plaintiff filed a suit against defendant in the court on the 04 day of December, 2010. Defendant failed to timely answer or otherwise defend said action and, thereby, Plaintiff is entitled to judgment against defendant is all things requested by Plaintiff in the suit. For these reasons, plaintiff asks the clerk to enter a default in favor of plaintiff.

**Respectfully Submitted,**

  
**Denise & Kenneth Cook**



**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**AFFIDAVIT OF SERVICE**



\*123786\*

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PLAINTIFF(S):	<b>DENISE AND KENNETH COOK</b>
DEFENDANT(S):	<b>BENEFICIAL, HSBC MORT. CORP</b>

STATE OF NEW YORK  
COUNTY OF ERIE ss.:

**Mark R. Cornwell**, the undersigned, being duly sworn, deposes and says that I was at the time of service over the age of eighteen and not a party to this action. I reside in the STATE OF NEW YORK.

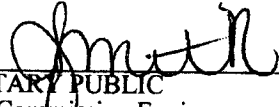
On 11/16/2010 at 1:11 PM, I served the within **CIVIL COVER SHEET; SUMMONS; ORIGINAL PETITION; PRELIMINARY INJUNCTION** on **BENEFICIAL, HSBC MORT. CORP** at 2929 WALDEN AVE, Depew, NY 14043 in the manner indicated below:

CORPORATE SERVICE: By delivering a true copy of each to **COURTNEY HOERNER, MORTGAGE RESEARCH SPECIALIST** of the above named corporation. The undersigned asked the recipient if he/she is authorized to accept service on behalf of **BENEFICIAL, HSBC MORT. CORP**, and the recipient responded in the affirmative.

A description of the Recipient, or other person served on behalf of the Recipient is as follows:

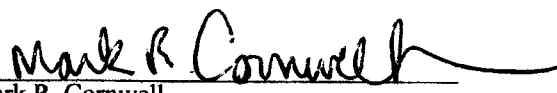
Sex	Color of skin/race	Color of hair	Approx Age	Approx Height	Approx Weight
FEMALE	WHITE	BROWN	20-34	5'0" - 5'3"	100-129Lbs.
Other Features:					

Sworn to and subscribed before me on  
November 16, 2010  
by an affiant who is personally known to  
me or produced identification.

  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_



JENNIFER M. SMITH  
Notary Public, State of New York  
No. 01SM6164484  
Qualified in Erie County  
Commission Expires April 23, 2011

X   
Mark R. Cornwell

North American Process Serving, LLC.  
2801 Wehrle Drive  
Williamsville, NY 14221  
716.565.0258  
Atty File#:

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### VERIFICATION

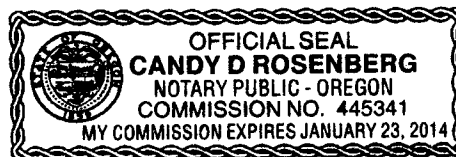
I, Denise & Kenneth Cook, do swear and affirm that all statements made herein are true and accurate, in all respects, to the best of my knowledge.

Denise & Kenneth Cook  
300 Newt Gulch Road  
Wilderville OR 97543

SWORN TO AND SUBSCRIBED BEFORE ME, Candy D. Rosenberg  
December 8, 2010, by Denise & Kenneth  
Cook on the 8th day of December, 2010, which witnesses my hand and seal of office.

Candy D. Rosenberg  
NOTARY PUBLIC IN AND FOR  
THE STATE OF OREGON

January 23, 2014



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## CERTIFICATE OF SERVICE

I, Denise & Kenneth Cook, do swear and affirm that I have served a signed copy of this Petition for No Answer Default, and Order for No Answer Default to any and all defendants by way of U.S.P.S. Certified mail # 7010 1670 00020328 7822 and return receipt.

*Denise Cook Kenneth Cook*

Denise & Kenneth Cook  
300 Newt Gulch Road  
Wilderville OR 97543

The Person<sup>CP</sup> above, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document and acknowledged to me that he/she<sup>CP</sup> executed the same in <sup>their</sup> ~~his~~ authorized capacity and that by <sup>their</sup> ~~his~~ signature on this instrument who is the person who executed this instrument.

I certify under PENALTY OF PERJURY under the laws of this State that the foregoing paragraph is true and correct.

Witness my hand and official seal.

*Candy D Rosenberg*  
NOTARY PUBLIC IN AND FOR  
THE STATE OF OREGON

*January 23, 2014*  
Notary Seal

